

# Contingent decisions



# What is a contingent decision?

- A decision that a member would have made differently or would/ would not have made, as a direct result of remedy.
- For example – opting out of the scheme, transferring benefits, or buying added years.
- May also include employment-related decisions, such as retiring earlier or later than planned.

# What's the difference?

## Scheme-related

- Generally provided for under the PSPJOA 2022:
  - [Section 5: Optant outs](#)
  - [Section 21: Transfers](#)
  - [Section 20: Voluntary contributions](#) (Added Pension)
  - [Section 25: Voluntary contributions](#) (Added Years)
- Member can be put back into pre-reform position

## Employment-related

- Act gives powers for schemes to make regulations:
  - [Section 22: Special cases](#)
- Subject to HMT Directions
- Loss may be financial or “loss of opportunity”
  - [Section 23: Compensation](#)
- High bar of proof

# Compensation

- Section 23 may apply where scheme rules do not provide for a specific situation.
- One of the following three conditions must be met for compensation to be payable:
  1. The loss is attributable to, or is reasonably regarded as attributable to, a relevant breach of a non-discrimination rule
  2. The loss is attributable to the application of any provision under the Act
  3. The member is a relevant member AND the loss is a Part 4 tax loss that is attributable to the value of rights in respect of remediable service
- If a condition is not met, IDRPs should be available.

# Consultation response

- **A.96.** Members will need to show that they took an action, relating to their membership of a public service pension scheme, that would have been different had it not been for the discrimination identified by the courts. The government considers that any claim will therefore need to be raised by members.
- **A.97.** The government accepts the **need for consistency in the approach** and agrees that guidance would be beneficial around member decisions to opt-out of membership of the schemes due to the discrimination identified by the courts.
- **A.98.** The government recognises that schemes may need to consider cases that are not envisaged in the guidance and may have unique or uncommon aspects. Whilst the guidance will be kept under review, **schemes will also need discretion to consider such cases on their merits and on a case-by-case basis.**

# Decision making process

- SAB's open letter to HMT in May 2021 highlighted difficulty in consistent decision making:
  - 44 individual scheme managers
    - Interpretation and application
    - Funding position
    - Internal controls/ governance
    - IDRPs > TPO
- National review body or panel?

## Section 5: Election for retrospective provision to apply to opted-out service

RSS to be issued within 18 months

Member given 12 months to elect

Clarity needed on individual discretion of scheme manager to determine opt out circumstances

[SAB letter to HMT](#) refers

- No clarity yet on conditions for eligibility
- No clarity yet on evidence required
- No clarity yet on legislative approach i.e. new opt-in or opt-out cancelled
- No clarity yet on post-remedy period
- Ongoing discussion with Home Office and HMT (via PDD)

## Section 20: Voluntary contributions

- A transitional member may have taken out additional pension contract(s) to mitigate the change to pension age and plan to retire early.
- Section 20 allows schemes to make provision to vary benefits or extinguish contributions on “roll-back”.
- FPS legacy schemes do not offer AP – no straightforward way to convert to AY.
- Service cap adds complexity.
- Scheme-specific solution required (Home Office).



## Section 25: Remedial arrangements to pay voluntary contributions to legacy schemes



RSS to be issued within 18 months



Member given 12 months to elect



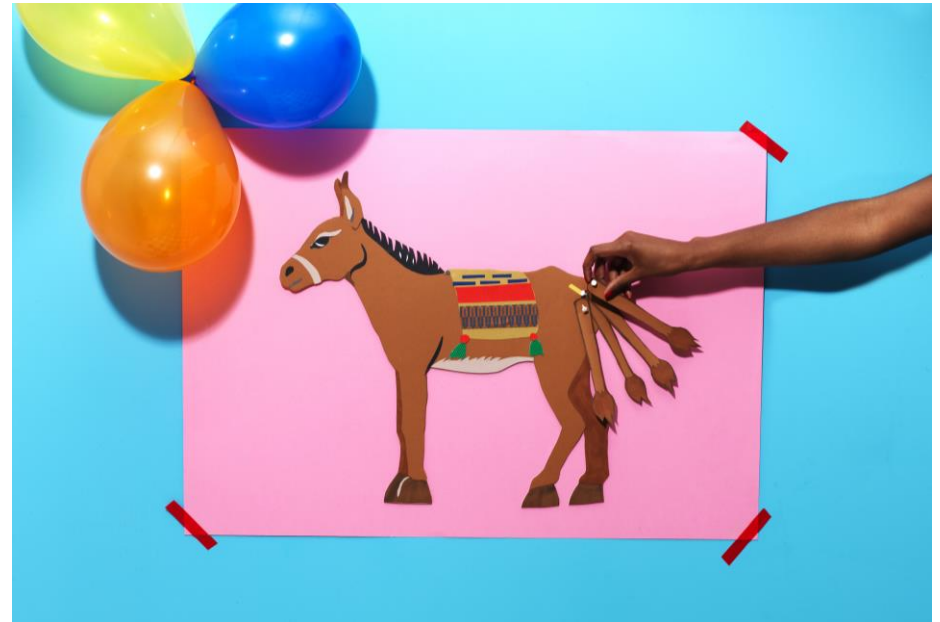
Clarity needed on individual discretion of scheme manager to allow claim



No new contracts for service after 1 April 2022 [[Section 91](#)]

# Your input (break out?)

1. Examples or contingent decision scenarios...
2. Decision making arrangements...
3. Ideas for process and evidence...
4. Reasonable time limits...



## Next steps

- Home Office to “schemify” PDD with devolved government departments
- Input from LGA/ admin/ software
- Informal engagement with SAB and via technical group
- Secondary legislation drafted
- Formal consultation – now understood to be early 2023

# WHITI?

CARE service not converted to final salary until 2023

- Members remain in 'new' scheme for remedy period until 2023
- **Contingent decisions cannot be offered until 2023**

IDRP rules state that there is an exemption for proceedings in respect of a dispute that has been commenced in any court or tribunal

Should the member be dissatisfied with the options they are given once the regulations are in place, they will be able to submit an IDRP

TPO's website states that it cannot help with enquiries or complaints about a decision made by a tribunal, court or another Ombudsman <https://www.pensions-ombudsman.org.uk/faqs> under "How do I know if my complaint is something you can look at?".

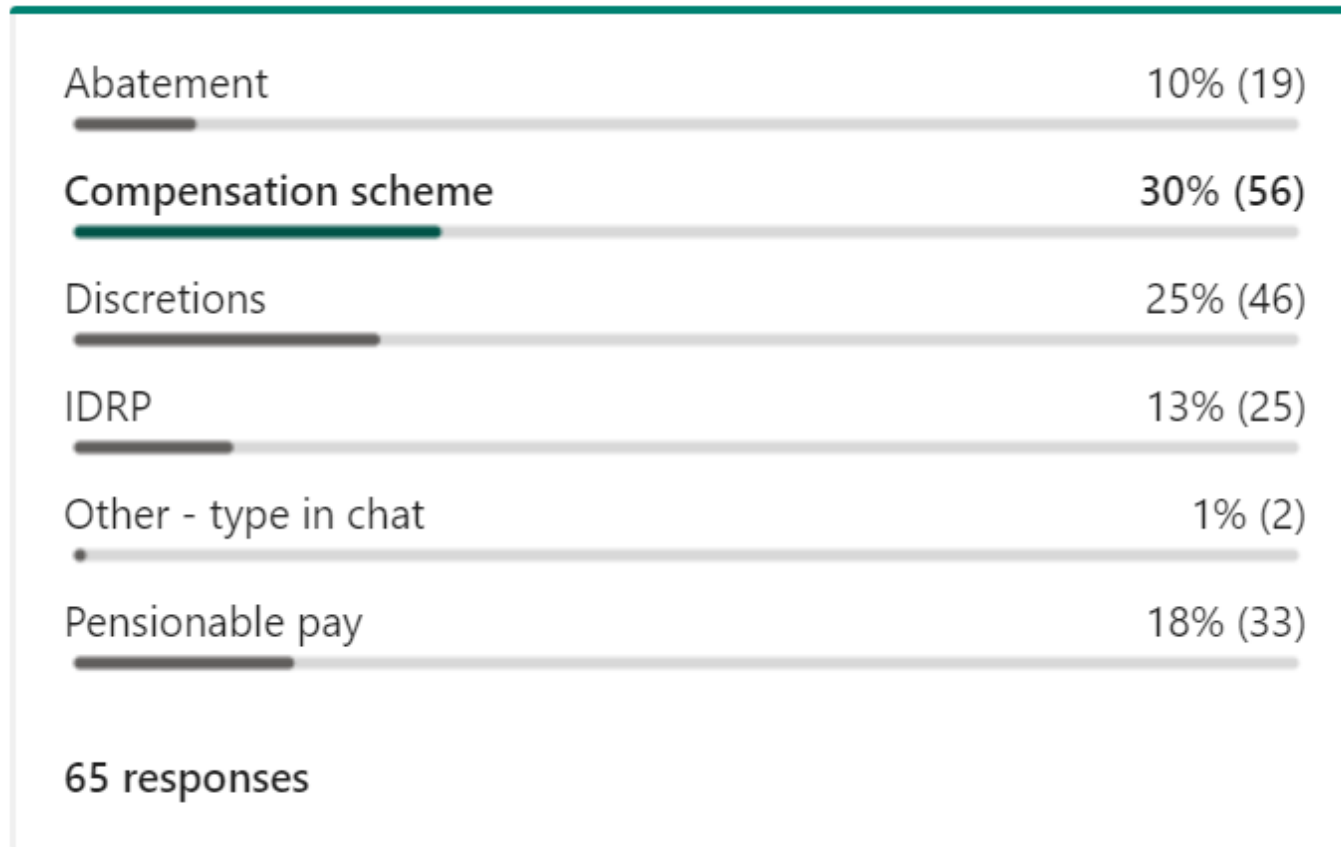
# Save the date – amended!

**FPS AGM 25-26 October 2022**

**18 Smith Square, London**



# Proposed workshop sessions



# Any questions



# Resources

- [www.fpsboard.org](http://www.fpsboard.org)
- [www.fpsregs.org](http://www.fpsregs.org)
- [www.fpsmember.org](http://www.fpsmember.org)
- [FPS bulletins](#)
- [Regulations](#)
- [GAD Guidance](#)
- [Age discrimination](#)
- [Special members FPS 2006](#)
- [Coffee morning archive](#)



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**Thank you for listening!**

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